

**Brookline Board of Appeals  
April 7, 2016, 7:00 PM  
Public Hearing**

**333 Washington Street  
Room 111**

**Board Members Present:** Jesse Geller (Chairman), Christopher Hussey, Jonathan Book  
**Staff Present:** Jay Rosa (Planning Department)

**329 Harvard Street**

**Proposal:** Increase restaurant seating from 58 to 108

**Zoning District:** G-1.75 (CC) General Business

**Precinct:** 8

**Board Decision:** Relief request **granted**, subject to conditions

**126 Thorndike Street**

**Proposal:** Construct garage in the rear yard

**Zoning District:** T-5 (Two-Family and Attached Single-Family)

**Precinct:** 9

**Board Decision:** Relief request **granted**, subject to conditions

**40 Thorndike Street**

**Proposal:** Renovate and convert from a single-family to a two-family dwelling

**Zoning District:** T-5 (Two-Family and Attached Single-Family)

**Precinct:** 9

**Board Decision:** Relief request **granted**, subject to conditions

*Minutes shall be posted on the Town of Brookline website (<http://www.brooklinema.gov/564/Zoning-Board-of-Appeals>) upon approval. Draft minutes shall be made available upon request.*

*Decisions shall be posted on the Town of Brookline website ([www.brooklinema.gov](http://www.brooklinema.gov)). Appeals, if any, shall be filed with land court or superior court within twenty days after the date of filing of such notice in the office of the town clerk.*

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**Board Members Present** – Jesse Geller (Chairman), Christopher Hussey, Jonathan Book  
**Staff Present** – Jay Rosa (Planning Dept.)

**7:00PM**

**329 Harvard Street** – Increase restaurant seating from 58 to 108 (Jin's Fine Asian Cuisine)

Board Chairman Jesse Geller opened the hearing and called case #2016-0014. Mr. Geller reviewed standard hearing procedure.

The Petitioner's Attorney, Robert Allen of the Law Office of Robert Allen (300 Washington Street, Brookline, MA) waived a reading of public hearing notice for the record and introduced restaurant owner Kitty Wang who has owned and operated restaurants around the greater Boston area for 32 years. Attorney Allen described the subject property as a single-story structure that will undergo significant interior renovation. This renovation will be accompanied by a seating increase from 58 to 108. Attorney Allen stated that this proposed seating increase, and associated off-street parking requirements, may be waived by special permit under the provisions of Zoning By-Law Section 6.02.2.1.b. The proposed 50 seat increase would require 10 additional parking spaces above the credited 12 that currently exist. Under Section 6.02.2.1.b, the Board may waive up to 10 required parking spaces.

In evaluating this zoning relief, the Board may consider operating characteristics, area parking demand, and access to public transit. Attorney Allen that Jin's Fine Asian Cuisine will employ 7-10 employees at a given time and deliveries will be encouraged. These employees will be shuttled to the site so there is limited need for employee specific parking. Attorney Allen further stated that Ms. Wang spoke with abutting residents regarding vehicular access and trash removal within a narrow alley that exists between the subject property and condominium units located to the north. This alley is accessible from Babcock Street and delivery trucks will often park at the end of the alley and deliver materials via hand truck. The Petitioner also intends to consolidate dumpsters and trash removal in this alley to reduce the frequency of alleyway activity. Attorney Allen did confirm that employees of existing commercial uses from 315-335 Harvard Street to utilize the alley for several parking spaces and several residents of the condominium building do maintain deeded parking spaces in this area.

Attorney Allen noted that the restaurant will operate until 11:00pm on weekdays and 1:00am on both Friday and Saturday. Attorney Allen further stated that the Coolidge Corner location of this restaurant provides various forms of public transportation, publicly owned parking lots, and metered street parking. Attorney Allen concluded his comments by reviewing project compliance with the standards for the grant of a special permit in accordance with By-Law Section 9.05. In Attorney Allen's opinion, the Town wants to promote popular restaurants in this immediate neighborhood and the use itself will not adversely impact the immediate neighborhood. Attorney Allen acknowledged that several neighboring residents expressed concern regarding trash generation, noise, and public safety within the narrow alley. Attorney Allen stated that the Petitioner desires to work closely with abutting residents to alleviate this issues moving forward.

Attorney Allen also reminded the Board that this restaurant will require annual licensing with the Board of Selectmen.

Chairman Geller questioned whether or not the Petitioner's lease agreement includes any provisions related to trash removal, deliveries, or parking. Attorney Allen stated that restrictions related to these issues were not included in the lease agreement.

Board Member Hussey stated that a submitted site plan would be useful for all parties involved. Mr. Hussey requested additional information about the condition of the current alley and dumpsters. Attorney Allen stated that bollards were installed near the entry of the alley and one large primary dumpster does require truck removal. Additional smaller dumpsters include rollers that allow dumpsters to be moved.

Chairman Geller called for public comment in favor of, or in opposition to, the Petitioner's proposal.

Maya French, of 9 Bradford Terrace, stated that she was speaking on behalf of the Bradford Terrace Condominium Association. Ms. French stated that the Association wished to reaffirm legal right to use the alley right of way and express concern about safety related issues. Ms. French stated that it is challenging to monitor daily activity within the alley and the enhance level of activity, resulting from seating expansion, could further degrade the condition of buildings and the alley itself. Ms. French confirmed that delivery and trash vehicles have hit the Bradford Terrace Condominium building. The association was also concerned about unauthorized vehicles. Ms. French supported the idea of trash and delivery vehicle parking at the end of the alley along Babcock Street. Ms. French confirmed that shed supports commercial activity in this area but wishes to limit damage to adjacent properties and vehicular use of the alley.

Chairman Geller noted that questions raised by the Bradford Terrace Association are valuable. Mr. Geller confirmed that requested zoning relief specifically relates to a parking waiver in connection with the proposed seating increase. Mr. Geller considered if there is a direct connection between the relief requested and the level of activity associated with this expanded business within the rear alley.

Attorney Allen stated that daily activity in the alley is not anticipated to increase significantly. Trash removal and dumping will occur on a daily basis and the Petitioner intends to use the same waste removal company as existing commercial tenants. Attorney Allen acknowledged that initial "bugs" will certainly need to be worked out but reiterated that Ms. Wang wishes to work closely with condominium residents if issues do arise.

Madhavi Prakash, of 9 Bradford Terrace, stated that she shared similar concerns to Ms. French. Ms. Prakash stated that her garden-level unit is primarily accessible from the alleyway in question and loitering and large vehicles due present a safety issue for her. Ms. Prakash noted that Ms. Wang has reached out to abutting residents and Ms. Prakash also supported the proposed consolidation of dumpsters/waste removal.

Chairman Geller reiterated that the Board does have authority in terms of applicability and enforcement of zoning regulations but has no purview over individual property rights. Mr. Geller requested that Zoning Coordinator Jay Rosa review the findings of the Planning Board.

Mr. Rosa stated that the Planning Board unanimously recommended approval of the proposed seating expansion. The Coolidge Corner area is transit rich and pedestrian friendly so the Board did not have major issue with the requested parking waiver. The Board did however have concerns

about increased intensity of the use itself in terms of deliveries and waste removal. Abutters echoed this concern so the Board did tweak proposed conditions accordingly. Mr. Rosa confirmed that the Planning Board recommended approval of floor plans submitted by People Architects, dated 12/17/2015, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall schedule a meeting at the site with at least 10 day notice to the building's management company, other businesses using the rear alley for trash and/or deliveries, neighbors abutting the alley, and the Assistant Director of Regulatory Planning to discuss the proposed use of the alley for deliveries, trash/grease removal and parking.
2. Prior to the issuance of a building permit, the applicant shall submit to the Assistant Director of Regulatory Planning for review and approval a final site plan indicating dumpsters and employee parking and final floor plans.
3. Prior to the issuance of a building permit, the applicant shall submit to the Director of Public Health and the Assistant Director of Regulatory Planning for review and approval a trash and grease plan, including location of dumpsters and other containers, name of company (ies) servicing the trash/grease pick-up, and hours of pick-up.
4. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision:  
1) final site plan showing dumpster location and employee parking, 2) floor plans including 108 restaurant seats stamped and signed by a registered architect; 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Mr. Rosa noted that requested condition #1 has largely been satisfied prior to this hearing.

Chairman Geller requested that Mr. Rosa also review the findings of the Building Department. Mr. Rosa stated that the Building Department also has no objection to the relief as requested. By-Law Section 6.02.1.b was specifically adopted to provide relief for projects such as this and the theoretical parking credit is a consistent Building Department interpretation. Mr. Rosa agreed that it is always challenging when a residential district directly abuts a business district, so the Town is sympathetic to that and will work with the petitioner and the Public Health Department if needed, to ensure compliance with all imposed conditions and building codes if the Board does find that the standards for the grant of a special permit are met.

Chairman Geller questioned whether the Petitioner was satisfied with conditions recommended by the Planning Board. Attorney Allen agreed that condition 1 was largely satisfied prior to this hearing and conditions 2 and 3 are most commonly handled during the Common Victualler License (CV) process with the Board of Selectmen. Attorney Allen reiterated the fact the CV license must be renewed annually and runs with the business itself rather than the land, which is the case with any granted special permit.

Chairman Geller stated agreement with this line of consideration for condition 3 but he did support maintaining condition 4 for the sake of documenting potential safety impact referenced by abutting residents.

Board Member Hussey concurred with Mr. Geller's comments and stated further support for the submission of a final site plan detailing dumpster locations and parking.

**Board Deliberation**

Chairman Geller stated that from a bigger picture, he was in favor of the requested parking relief. He believed the proposal to meet the conditions for the grant of a special permit in accordance with By-Law Section 6.02.2.1.b. Mr. Geller agreed that the implementation of this section of the By-Law was intended to achieve commercial expansion such as this. Mr. Geller further stated that the Coolidge Corner area is a core business district that has the capacity to support this type of seating expansion. Mr. Geller believed that this proposal, both in terms of site and concept, is appropriate and the only remaining issue for him is potential safety and parking as stated by abutting residents. Mr. Geller further stated that he has not heard testimony or evidence to preclude compliance with Section 9.05 standards for the grant of a special permit.

Mr. Hussey again noted the importance of a final site plan, particularly in terms of documenting use of the alley in question for both restaurant employees and abutting residents.

Board Member Book clarified that the specific relief request before the Board pertains to a waiver of ten required off-street parking spaces. The use of the property itself will remain the same and he suggested that the Board's consideration should focus exclusively on the appropriateness of the site to receive a parking waiver. Mr. Book agreed that the Coolidge Corner area is an ideal location to reduce parking requirements largely due to the aforementioned walkability, public transit, and public parking. Mr. Book further stated that there is not a clear correlation between additional restaurant seating and increased deliveries or trash removal.

**The Board unanimously voted to grant special permit relief as requested** and agreed to strike condition #1 because it was already satisfied by the Petitioner and strike condition #3 because it is more appropriately addressed through the CV licensing process.

**126 Thorndike Street** – Construct a detached two-car garage in the rear yard

Chairman Geller called case #2016-0006 and reviewed standard hearing procedure.

Project architect Alex Svirsky, of Architex Team Inc. (38 Highgate Road, Framingham, MA) waive a reading of public hearing notice for the record and introduced property owner James Kinsella. Mr. Svirsky described the proposed garage reconstruction as a simple project that includes the demolition of an existing single-car garage and construction of a detached two-car garage. This demolition was approved by the Preservation Commission and the new garage will be located approximately 1 foot from the side lot line and .5 feet from the rear lot line. Mr. Svirsky further described the subject property as a tight site and he noted that there is evidence of concrete foundation, presumably for a two-car garage previously located in this portion of the property. Mr. Svirsky confirmed that the proposed garage would measure 20' x 12' with a maximum height of 11.5'.

Chairman Geller requested additional detail regarding proposed counterbalancing amenities for the requested side and rear yard setback relief. Mr. Svirsky stated that the Petitioner originally proposed a roof deck above the garage to provide area for plantings and to satisfy usable open space requirements. Subsequently, the abutting resident expressed concern about the visual impact of this roof deck and the land surveyor determined that adequate usable open space can be

met at the ground level. Currently, the Petitioner is proposing to install shrubs along the southern façade to partially screen the larger structure from abutting residents.

Board Member Book questioned if the Petitioner shared project details with abutting residents, particularly those living at 130-132 Thorndike Street and 63-75 Lawton Street. Mr. Svirsky stated that all abutters were appropriately noticed prior to public meetings/hearings on this matter. Mr. Svirsky also stated that the resident at 71 Lawton Street did provide input on the initial proposal.

Board Member Hussey requested additional detail regarding side and rear setbacks because these lot lines are not parallel to garage walls. Mr. Svirsky stated that, at the closest point, the proposed garage will be located 2 feet from the side lot line in question and the garage located on the adjacent lot does not present a setback of less than 1 foot. Mr. Svirsky acknowledged that this area between structures is narrow but will allow access for maintenance and repair if needed. Mr. Svirsky further stated that the subject garage will be constructed of painted cement panel and the adjacent garage is constructed of brick and concrete block.

Chairman Geller called for public comment in favor of, or in opposition to the applicant's proposal.

Tony How, of 71 Lawton Street, stated that he originally opposed a proposed garage roof deck that was subsequently eliminated from this proposal. Mr. How further stated that he had concern about potential damage to a tree root system due to the expanded garage foundation. Mr. How stated that a large tree is located in his property and continues to lean toward his dwelling structure. Mr. How suggested that the architect consider strategies to mitigate damage to this tree root system.

Board Member Book questioned if the proposed foundation expansion would hasten damage to the tree in questions.

Mr. Svirsky stated that the concrete slab would be expanded to accommodate the conversion to a two-car garage and stem walls would extend approximately 4 feet below grade.

Board Member Hussey suggested sonotubes and grade beams are viable construction strategies that would minimize potential damage to the tree root system. Mr. Hussey further stated that the scale of construction/excavation to construct this single-story garage would not result in significant soil erosion.

Chairman Geller requested that Zoning Coordinator Jay Rosa review the findings of the Planning Board and the Building Department. Mr. Rosa stated that the Planning Board unanimously recommended approval of the proposed garage construction. The initial roof deck has been eliminated from proposed plans and existing usable open space provided at the ground level is sufficient. Mr. Rosa further stated that, from a streetscape standpoint, the garage design and location are consistent with several similar detached garages in the immediate neighborhood. Mr. Rosa confirmed that the Planning Board recommended approval of the site plan by professional land surveyor Kenneth Anderson dated 3/31/2016, and the architectural plans by registered architect Derek Rubinoff, revised 3/11/2016 and 3/31/2016, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final corrected site plan with open space calculations and updated parking configuration certified by registered land surveyor and final floor plans and elevations subject to the review and approval of the Assistant Director of Regulatory Planning.

2. Prior to the issuance of a building permit, the applicant shall submit a final landscape plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning, with the advice of the Planning Board.
3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Mr. Rosa further stated that the Building Department also had no objection to the relief as requested. All required zoning relief can be characterized as extensions of pre-existing nonconformities. The two-car garage also reduces the need for tandem parking in the somewhat narrow driveway. Mr. Rosa stated that the potential damage to an existing tree root system is a new concern that was not raised with the Building Department, however, he did concur with Mr. Hussey's comments that construction techniques may certainly reduce the likelihood of further tree damage. Mr. Rosa concluded his comments by stating that the Building Department would work with the applicant to ensure compliance with imposed conditions and building codes if the Board finds that the standards for the grant of a special permit are satisfied.

### ***Board deliberation***

Board Member Hussey stated that he was in favor of granting the requested zoning relief and recommended that imposed conditions be revised to include the submission of a revised foundation plan, specifically intended to eliminate potential damage to the root system of the tree located on the adjacent property at 71 Lawton Street. Mr. Hussey also stated that the proposed 2 foot side yard setback at the closest point is adequate for property owner access to that side portion of the garage.

Board Member Book concurred with Mr. Hussey's comments and specifically stated that he believed the standards for special permit relief, in accordance with Zoning By-Law Sections 9.05 and 5.43 are satisfied. Mr. Book also noted that landscaped counterbalancing amenities are proposed for the requested setback relief.

Chairman Geller concurred with Board Member comments.

### **Unanimous Board grant of requested special permit relief, subject to the following revised conditions:**

- 1. Prior to the issuance of a building permit, the applicant shall submit a final corrected site plan with open space calculations and updated parking configuration certified by registered land surveyor, subject to the review and approval of the Assistant Director of Regulatory Planning.**
- 2. Prior to the issuance of a building permit, the applicant shall submit final garage elevations and floor plans that include a revised foundation plan that indicates construction techniques to mitigate adverse impact to the root systems of existing trees located on the adjacent parcel at 71 Lawton Street, subject to the review and approval of the Assistant Director of Regulatory Planning.**

3. **Prior to the issuance of a building permit, the applicant shall submit a final landscape plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning, with the advice of the Planning Board.**
4. **Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

#### **40 Thorndike Street – Renovate and convert from single-family to two-family**

Chairman Geller called case #2015-0062 and reviewed standard hearing procedure.

The Petitioner's Attorney, Jacob Walters waived a reading of public hearing notice for the record and introduced property owner Mark Linsky. Attorney Walters stated that the proposed conversion to a two-family dwelling and associated exterior modifications were reviewed by the Planning Board at two separate public meetings. Initially, abutting residents and Board Members expressed concern about the overall size and impact that would result from proposed structural alterations. In response to this feedback, Mr. Linsky reduced the overall gross floor area increase to 434 square feet and will not further exacerbate pre-existing nonconforming front and side yard setbacks for the structure itself. Following these modifications, the proposal was unanimously approved by the Planning Board and abutting residents have not indicated further opposition to the proposed alterations. Attorney Walters further stated that the structure in question, as well as the overall property, will be "significantly" renovated.

Attorney Walters further detailed specific zoning relief requested. Front and side yard setback non-compliance are preexisting and nature. The structure will be extended vertically along these nonconforming setbacks but the structure will not be moved any closer to these lot lines in question. The existing driveway will be extended toward the side lot line (southwest) in order to improve vehicular maneuverability and parking safety. Attorney Walters confirmed that special permit relief is also required under By-Law Section 8.02.2 because the project will alter a pre-existing nonconforming structure.

Attorney Walters stated that all requested zoning relief may be granted by the Board by special permit if the general standards for the grant of a special permit are satisfied in accordance with By-Law Section 9.05. Additionally, the applicant proposes various improvements to landscaping and fencing to serve as counterbalancing amenity for the requested setback relief in accordance with By-Law Section 5.43. Attorney Walters concluded his comments by noting that the parking layout was also revised to pull the 5<sup>th</sup> required parking space away from the rear lot line to maintain open space in that portion of the yard.



Board Member Hussey suggested that parking stall dimensions would be useful if included on the submitted site plan or final landscaping plan. Mr. Hussey also suggested that the request to relocate the 5<sup>th</sup> surface parking space could adversely impact the maneuverability of parked vehicles because an existing bay extends from the side of the structure toward the existing driveway (choke point).

Chairman Geller requested that Zoning Coordinator Jay Rosa review the findings of the Planning Board and the Building Department.

Mr. Rosa stated that the Planning Board unanimously recommended approval of proposed modifications following two public meetings on this matter. Mr. Rosa commended the Petitioner for working closely with the Planning Board and abutting residents to revise submitted plans for the sake of reducing the overall massing. The two-family conversion is permitted within the T-district and the resulting gross floor area complies with requirements. Mr. Rosa confirmed that Board Members indeed recommended that all five proposed parking spaces be pulled slightly away from the rear lot line to maintain somewhat of a backyard feel. In general, the Board also recommended a more robust landscaping proposal to serve as counterbalancing amenities and consultation with the Town Arborist to protect street trees during construction. Therefore the Planning Board recommended approval of the site plan by professional land surveyor Kenneth Anderson dated 3/31/2016, and the architectural plans by registered architect Derek Rubinoff, revised 3/11/2016 and 3/31/2016, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final corrected site plan with open space calculations and updated parking configuration certified by registered land surveyor and final floor plans and elevations subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscape plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning, with the advice of the Planning Board.
3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Mr. Rosa further stated that the Building Department also has no objection to the requested relief. Again all cited relief represents extensions to pre-existing nonconformities that will not locate the structure closer to any of the lot lines in question. Mr. Rosa noted one correction that was not accurately discussed by the Planning Board. A small “bump out” addition at the rear of the structure would serve to convert the second means of egress

from an existing exterior spiral staircase to an enclosed interior staircase. This is a preferable design when considering building codes but this new construction would be located within the required rear yard setback. This addition does not extend beyond the rear façade of the structure but again does represent new structure that is located within the required rear yard. Mr. Rosa confirmed that this condition is also characterized as an alteration to a pre-existing nonconformity and may be permitted by special permit if the standards under sections 9.05 and 5.43 are met. Mr. Rosa confirmed for the record that the proper citation for rear yard requirements is By-Law Section 5.70.

Chairman Geller noted that public notice does include language that captures additional zoning relief as needed but he did emphasize to the Petitioner that should the Board decision be appealed, the lack of specific citation for the rear yard setback may be referenced.

Attorney Walters noted potential risk associated if an appeal does occur and he was satisfied that abutters are not “especially opposed” to the proposed conversion as currently designed

### ***Board Deliberation***

Board Member Book stated that he believed the conversion proposal and associated exterior additions to be worthy of the grant of a special permit in accordance with By-Law Section 9.05. Mr. Book concurred that necessary zoning relief for the rear staircase bump out in question may be characterized as an extension of a pre-existing nonconformity that does not reduce the rear yard setback beyond the current condition. Mr. Book also noted that appropriate relief for this nonconformity is provided under By-Law Section 5.43 and the applicant reviewed proposed counterbalancing amenities for various reliefs from yard setback requirements.

Board Member Hussey and Chairman Book concurred with Mr. Book’s comments. Mr. Hussey supported the Planning Board request that the applicant continue to work with the Planning Department to expand proposed landscaping features and he noted for the record that a repaired fence along rear portions of the property would be constructed of wood with lattice features. Chairman Geller further consult with the Town Arborist in order to provide protection for existing street trees during construction. Chairman Geller supported the grant of relief as requested, finding that requirements under By-Law Section 5.43, 5.07, 6.04.5.c.3, 8.02.2, and 9.05 are satisfied.

**Unanimous Board grant of requested relief, subject to conditions stated for the record.**

**Unanimous Board approval of draft hearing minutes from 3/24/16 and 3/31/16.**

**Hearing Closed.**